Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated With Administration of Telecommunications Relay Service, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms	)	CC Docket No. 98-171
	)	
Telecommunications Services for Individuals With Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990	)	CC Docket No. 90-571
	)	
Administration of the North American Numbering Plan and North American Numbering Plan Cost Recovery Contribution Factor and Fund Size	)	CC Docket No. 92-237 NSD File No. L-00-72
	)	
Number Resource Optimization	)	CC Docket No. 99-200
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170

PETITION FOR RECONSIDERATION

The American Public Communications Council ("APCC"), pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, seeks reconsideration of the Commission's March 14, 2003 (*"Waiver Order")* in the above-captioned proceeding[1]. In reconsidering the *Waiver Order*, the Commission should ensure that incumbent local exchange carrier ("ILEC") charges for payphone lines are not burdened by the subsidy

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[1] *Federal-State Joint Board on Universal Service*, Order and Second Order on Reconsideration, 18 FCC Rcd 4818 (2003) (*"Waiver Order"*), 68 Fed. Reg. 15669 (Apr. 1, 2003).

for Centrex lines which the LECs can now, under the current waiver, include in the universal service line item.[2]

I. STATEMENT OF INTEREST

APCC is a national trade association representing over 1,000 independent (non-LEC) providers of pay telephone equipment, services and facilities. APCC seeks to promote competitive markets and high standards of service for all public payphones. To this end, APCC actively participates in Commission proceedings affecting independent payphone service providers ("PSPs").

II. BACKGROUND

In enacting section 276 of the Communications Act of 1934, as amended ("Act"), Congress had twin goals: "to promote competition among payphone service providers and promote the widespread deployment of payphones for the benefit of the general public."[3] The Commission has sought to advance those statutory goals in a

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[2] Commissioner Copps, in commenting on the *Waiver Order*, observed that the waiver was granted without sufficient "analysis of the impact, the cost, or the precedent it creates for additional mark-ups." Commissioner Copps also stated that "these mark-ups [on multi-line business lines] may affect small and medium enterprises and will require these small businesses to subsidize large businesses." Although he did not focus on the payphone-specific issues that APCC raises here, payphone service providers are among the small businesses that will be adversely impacted by the subsidy they must pay for the benefit of the large businesses that use Centrex service, an impact that will work to the detriment of the general public's ready access to the telephone network.

[3] 47 U.S.C. § 276(b)(1).

variety of proceedings.[4] In the *New Services Test Order,* the Commission reviewed ILEC payphone line rates for compliance with section 276.[5] The Commission found that the BOCs must comply with the "new services test" in setting payphone line rates and, in interpreting the test, the Commission specifically rejected an argument that BOC payphone line rates "may include subsidies for other BOC services."[6]

The Commission also has demonstrated sensitivity to the goals of section 276 in its generic proceeding in this docket regarding assessments for universal service support.[7] The Commission, recognizing the decline in payphone deployment and the corollary need to minimize universal service assessments on PSPs, has proposed to treat PSPs as single line business/residential users "for purposes of determining assessments for payphone connections."[8] (Assessments on single business line/residential users are

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4 *See, e.g., Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* Report and Order, 11 FCC Rcd 20541 (1996) and *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* Third Report and Order, and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (1999).

5 *See Wisconsin Public Service Commission Order Directing Filings,* 17 FCC Rcd 2051 (2002) ("*New Services Test Order*").

6 *See New Services Test Order* at ¶¶ 55-56; *id.* at ¶ 51 (quoting with approval from a Bureau order that because "the new services test is a cost-based test, overhead allocations must be based on costs, and therefore *may not be set artificially high in order to subsidize or contribute to other LEC services*" (emphasis added)).

7 *Federal-State Joint Board on Universal Service,* Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002) ("*Second Further Notice*") ¶ 75.

8 *Second Further Notice* at ¶ 75, n.174. *See also* APCC Comments filed April 22, 2002 ("APCC April 2002 Comments") at 1-5 and 24 in response to *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Further Notice of Proposed Rulemaking and Report and Order, 17 FCC Rcd 3752 (2002).

significantly lower than contemplated for multi-line business line connections.) The Commission did so even though PSPs are classified as multi-line business line users for purposes of the subscriber line charge ("SLC"). By so acting, the Commission took a significant step in the direction of promoting widespread deployment of payphones.

By contrast, the Commission in its *Waiver Order* failed to take into consideration the goals of section 276.[9] The *Waiver Order* results in a subsidy by PSPs of the LECs' Centrex services that is inconsistent with the Commission's *New Services Test Order* and also results in the imposition of LEC universal service fees for PSPs far in excess of the amounts that are warranted.

III. THE *WAIVER ORDER* RESULTS IN LEC PAYPHONE SERVICE LINE RATES THAT SUBSIDIZE LECS' CENTREX SERVICES IN CONTRAVENTION OF THE COMMISSION'S *NEW SERVICES TEST ORDER*

On April 1, 2003, Verizon, BellSouth, SBC (and presumably other LECs) began charging universal service line item rates – referred to here as the Federal Universal Service Fee ("FUSF") – for multi-line business lines that are far higher for non-Centrex customers than those rates would have been without a subsidy for the LECs' Centrex customers. For example, Verizon's \$.95 FUSF for its Pennsylvania multi-line business line customers[10] would, absent the *Waiver Order*, have been \$.58 per line

9 The petitions that resulted in the *Waiver Order* were not placed on public notice. APCC was not aware of those petitions until the *Waiver Order* was released.

10 Verizon Tariff FCC No. 1, 12th Rev. Page 4-26, section 4.1.7.5(H)5.

per month.[11] Thus, $.37 out of the $.95 FUSF a PSP in Pennsylvania pays is a direct subsidy for Verizon's Pennsylvania Centrex customers.[12]

To the extent these subsidies of Centrex customers are at the expense of PSPs, the subsidy is inconsistent with the Commission's *New Services Test Order*.[13] To correct this inconsistency, the Commission should modify the *Waiver Order* to provide that LECs may not charge PSPs the Centrex subsidy portion of the FUSF.[14]

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11 Verizon March 17, 2003 Transmittal No. 302, Description and Justification, Work Paper USF No. 2.

12 Based on a review of the various tariff filings and supporting data, the differential in the FUSF subsidy of Centrex service varies from state to state, with the FUSF in states where the LEC has a higher percentage of Centrex lines compared with other multi-lines business lines having the greatest subsidy. In the former Bell Atlantic states, the *Waiver Order* has resulted in approximately a 60 percent increase in Verizon's FUSF over what the FUSF would have been without a Centrex subsidy. In the former NYNEX territories, the comparable increase has been from $.67 to $.93 ($.94 in New York and Connecticut), or approximately a 39 percent increase over the rate that would have been charged absent the subsidy for Centrex service. For BellSouth, the comparable increase is from a Centrex subsidy-free FUSF of $.75 to a Centrex-subsidized FUSF of $.93, an increase of approximately 24 percent. For SBC, the percentage increase of the FUSF over the FUSF that would have been assessed absent the Centrex subsidy varies widely. For example, in Indiana, where there are far more Centrex lines (approximately 390,000) than other multi-line business lines (approximately 250,000), the FUSF for SBC Ameritech is $1.10 (*see* Ameritech Tariff FCC No. 2, Original Page 80.7.1, section 4.1.7(c)(2)(b)). Absent the Centrex subsidy, the FUSF in Indiana for a multi-line business line would have been about $.53 ($5.52 EUCL/SLC + $.28 LNP = $5.80; $5.80 x .091 contribution factor = $.527 or approximately $.53), less than half the $1.10 Centrex subsidy FUSF. By comparison, in Michigan, where Centrex lines (approximately 542,000) are fewer than other multi-line business lines (approximately 900,000), the FUSF for SBC Ameritech is $.75. Absent the Centrex subsidy, the FUSF in Michigan for a multi-line business line would have been about $.51 ($5.34 EUCL/SLC + $.28 LNP = $5.62; $5.62 X .091 contribution factor = $.511 or approximately $.51), about a third less than the $.75 Centrex subsidy FUSF.

13 *See New Services Test Order* at ¶¶ 51, 55-56.

14 The LECs could either absorb the resulting revenue loss, increase the FUSF to all multi-line business line customers (other than PSPs), or increase the FUSF to Centrex customers. Given the relatively small percentage of multi-line business lines that are payphone lines, the increase to other multi-line business customers should be nominal.

IV. REDUCTION IN THE FUSF APPLICABLE TO PSPS WOULD BE CONSISTENT WITH THE COMMISSION'S PROPOSAL IN THE *SECOND FURTHER NOTICE* TO TREAT PAYPHONE LINES AS SINGLE BUSINESS LINES FOR PURPOSES OF UNIVERSAL SERVICE ASSESSMENTS

As noted above, the Commission properly proposed in the *Second Further Notice* not to classify payphone lines as multi-line business lines for purposes of connections based universal service assessments. Rather the Commission would treat payphone lines as single business, residential and mobile wireless connections.[15] Accordingly, on reconsideration of the *Waiver Order*, the Commission should direct the LECs to assess PSPs a Centrex subsidy-free FUSF based on the SLC that applies to single business and residential lines.

V. CONCLUSION

For the foregoing reasons, the Commission, on reconsideration, should, at a minimum, modify its *Waiver Order* by directing the LECs to refrain from imposing on PSPs any FUSF that contains a subsidy for Centrex service.

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15 *Second Further Notice* at ¶ 75.

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Respectfully submitted,

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